

# C O D E 2 0 / J M J

## S I D E B A R

### JAGMAN Chapter 1 Revision

On 11 February 2022, the Judge Advocate General, as authorized by the Secretary of the Navy (SECNAV), promulgated the latest revision (Change 1) to the Manual of the Judge Advocate General (JAGMAN), JAGINST 5700.7G. This revision makes several important changes to Chapter 1 to clarify existing requirements and issue new guidance based on legislation and changes to regulations. Additionally, this revision incorporates many changes recommended by practitioners across the fleet to resolve confusion or fix specific gaps identified in the previous instruction. These changes do not implement, or otherwise incorporate, any provisions within the National Defense Authorization Act (NDAA) for Fiscal Year 2022. Such changes are forthcoming.

Below are highlights of the most significant changes, organized numerically and by subpart.

#### Subpart A – Nonpunitive Measures

- **0103(b)(7) – “Extra Military Instruction (EMI)”** – Grants a commander or officer in charge (as defined in subsection 0106(b)) authority to delegate assignment of EMI outside of working hours.

#### Subpart B – Nonjudicial Punishment (NJP)

- **0106(c) – “Authority to Impose” NJP** – Removed the word “Designated” in title for a Principal assistant who has been delegated the authority to conduct NJP. The title now matches the exact language of Part V, Paragraph 2(c) of Manual for Courts-Martial (MCM).
- **0107(b) – “Jurisdiction over Reserve Component Personnel on Active Duty or Inactive-Duty Training”**– This revision specifies that a member of a Reserve Component is subject to the Uniform Code of Military Justice (UCMJ) during travel to and from active duty *and* inactive-duty training sites. Changes made to align with case law and the Military Justice Act of 2016 (MJA16).
- **0109(d) – “Advice to Accused before Initiation of Article 15, UCMJ, Proceedings”** – Clarification that replaces the previous term “independent” with the new term “conflict free” when describing counsel and removes previous limitation on the scope of the consultation a military lawyer may provide an accused prior to NJP, aligning this section more closely with the Naval Legal Service Command Manual.
- **0111(h) – “Limitations on and Nature of Punishments”** – Clarifies that imposition of NJP will still be recorded in the member’s record even when all punishment is suspended.

- **0113(b)(4) – “Effective Date and Execution of Nonjudicial Punishment”** – Language added to track paragraph 7.d of Part V of the MCM. If action is not taken within 5 days of an appeal, and if the service member so requests, the remaining punishment shall be stayed until action is taken.
- **0114(a) – “Punitive Censure”** – Clarifies that a punitive censure may only be imposed at NJP or court-martial.
- **0114(e)(2) – “Appeals (of Punitive Censure)”**– Adds separate paragraph to emphasize the requirement that statements submitted by the service member use temperate language and be limited to pertinent facts. Prohibits countercharges or opinions that impugn others.
- **0117(a) – “Authority to Act on Nonjudicial Punishment Appeals”** – Clarifies that commanders “will seek direction” from General Court-Martial Convening Authority (GCMCA) in operational chain of command before forwarding NJP appeals, consistent with previous changes to JAGMAN 0128.

### **Subpart C1 – Pretrial Matters**

- **0126(b) – “Determination of Status of Case as National Security Case, Investigation of Suspected National Security Case, and Exercise of Jurisdiction in Such Cases”** – Language added to refer to subsection (f) for clarification on disposition options.
- **0126(j) – “Plea Agreements (in National Security Cases)”** – Language added to refer to section 0138 regarding plea agreements involving grants of immunity in national security cases.
- **0128(b)(4) – “Disposition of Charges”** – Language added in cases where sex-related offense was committed in an area of exclusive federal jurisdiction to inquire whether the victim has a preference of federal United States Attorney’s Office prosecution, military prosecution, or has no preference.
- **0128(e)(2) – “Consideration of Victim’s Views Regarding Disposition”** – Replaced “referral” with “disposition” as more appropriate term for the range of results that could take place in any given case.
- **0128(h)(4)(e) – “Decisions not to Refer Charges for Sex-Related Offenses”** – When a case file is forwarded for review following a decision not to refer charges, certification that the alleged victim was notified of the opportunity to express his or her preference for jurisdiction is required.
- **0128(j) – “Forwarding of Charges by an Officer in a Navy Chain of Command”** – Clarifies that commanders will seek direction from the GCMCA in the administrative chain of command if there is no operational chain of command before forwarding charges warranting court-martial.
- **0132(b)(2) – “Counsel for Accused Request to Interview Victim of Alleged Sex-Related Offense prior to Article 32 Hearing”** – Language amended to more closely align with Article 6, UCMJ.
- **0132(c) – “Audiovisual Technology (at Article 32 Hearing)”** – Adds additional option for accused presence at Article 32 proceedings by remote means.

- **0132a-0132c – “Certain Proceedings Conducted Before Referral”** – Separates and clarifies types of proceedings conducted before referral. These new sections replace previous sections (d) and (e).
- **0133(d) – “Additional Matters in Convening Orders”** – Clarifies ability for convening authority to refer a case to a summary court-martial pursuant to Article 16(d), UCMJ.

### **Subpart C2 – Trial Matters**

- **0135(a) – “Article 39(a), UCMJ, Sessions”** – Language added to ensure Victims’ Legal Counsel are included in scheduling process.
- **0137(d) – “Plea Agreements”** – This is a new provision that lists the requirements for plea agreements involving both pre-and post-MJA16 offenses. Language added to identify the requirements for plea agreements involving straddling offenses.
- **0141a(c) – “Personally Identifiable Information in Records of Trial”** – Language regarding race, ethnicity, and gender data added in accordance with Section 540I(b)(1) of the NDAA for Fiscal Year 2020.
- **0142 – “Release of Information Pertaining to the Administration of Military Justice and Accused Persons”** – Multiple subsections cleaned up for clarity and redundancy.
- **0145 – “Financial Responsibility for Costs Incurred in Support of Courts-Martial”** – Clarifies funding questions involving activated reservists.

### **Subpart C3 – Post-Trial Matters**

This section has been significantly re-ordered to reduce redundancy, provide clarity, and consistency with relevant portions of MCM for post-trial processes. Key changes are:

- **0148 – “Effective Dates Relating to Post-Trial Processing and Post-Trial Sentencing Procedures”** – This is a new section added to Subpart C3 and placed at the beginning to clarify which JAGMAN controls for post-trial processing requirements depending on when a case was referred (i.e., pre-MJA16 implementation date of 1 January 2019, or, on or after 1 January 2019.)
- **0149 – “Post-Trial Representation of a Convicted Accused”** – Formerly in Subpart C2-Trial Matters, this section was moved to the Post-Trial section for consistency and clarity. Creates clear delineation of responsibilities, where previous version intertwined roles between Trial Defense Counsel and Appellate Defense Counsel. Subparagraph (a) edited to clarify the post-trial responsibilities and representation of a convicted accused by trial defense counsel. Subparagraph (c) pivots from the trial defense counsel’s post-trial role to the role of appellate defense counsel during Article 66(b) review.
- **0150 – “Statement of Trial Results”** – Clarifies that the Statement of Trial Results (STR) replaces the Report of Result of Trial for all purposes, including confinement, pay, and any other personnel

actions associated with the result of trial of the convicted accused. Removed the specific listing of other items that are specified in the STR form itself.

- **0151 – “Accused and Crime Victim Access to Courts-Martial Records Following Adjournment”** – Adds a requirement for RLSOs or LSSSs to provide compliance with request for exhibits, audio within five (5) duty days of receiving a written request. New 0151 clarifies a few items: access to “exhibits” means admitted at trial and appellate exhibits; audio recordings provided to accused and victim can be “unredacted”; and access does not include any sealed or classified sessions or materials.
- **0153– “Convening Authority (CA) Action”** – Clarifies CA clemency power. States: *“Granting clemency is entirely within the discretion of the convening authority. The scope of authority to grant clemency is based on the date of the earliest offense of which the accused was convicted.”*  
Subparagraphs (a) through (c) orient the reader to the correct clemency rules based upon the date of the offense and the applicable MCM. For post-MJA16 cases, this JAGMAN update clarifies the two options a CA has when deciding whether to grant relief: (1) take action on the findings, which is tantamount to granting relief; or (2) take NO action on the findings, which is tantamount to denying relief.
- **0155 – “Service and Execution of Sentences”** – This section is repositioned from 0161 to 0155 for procedural and logical flow. This section adds the following to the old version:
  1. Clarifying that confinement takes effect on the date the sentence is announced.
  2. Identifying Code 40’s role in issuing a “NOCAR” (notification of completion of appellate review)
  3. Specifying that a dismissal will be executed when a court-martial is final IAW Rule for Court-Martial (R.C.M.) 1209 and the dismissal is ordered executed by the SECNAV or SECNAV’s designee.
  4. Clarifying that a sentence to hard labor without confinement is executed when the entry of judgment is signed by the Military Judge.
- **0156 – “Entry of Judgment”** –This revision removed references to the RLSO or LSSS as being responsible for preparing the Entry of Judgment. Revision also modifies the Military Judge’s timing requirements to enter the Entry of Judgment in subparagraph (c) to *“the military judge will enter the judgment of the court within 20 days of the later of either: (1) receipt of the convening authority’s action or (2) receipt of the record of trial for verification in accordance with Section 0156(d).”* This clarifies that Entry of Judgment cannot be completed until Military Judge has both Convening Authorities Action and the Record of Trial.
- **0160 – “Transmittal and Review of Records of Trial”** – Clarifies Code 40’s role, breaks down various types of transmittal requirements, discussed coordination with Code 40. Specifically, subpart (b) requires that within seven (7) days of certification of any general or special court-martial record of trial, the cognizant RLSO or LSSS will provide a digital, unredacted copy of the certified record of trial to Navy-Marine Corps Appellate Review Activity (OJAG, Code 40) via the Code 40 SharePoint site for public release pursuant to Article 140a, UCMJ. Subpart (c) requires *all* general and special courts-martial certified records of trial be mailed to Code 40 with the following two exceptions: any special court-martial record of trial of an enlisted accused without a finding of guilty (i.e., full acquittal) or any special court-martial record of trial of an enlisted accused where the sentence does not include a punitive discharge or confinement for more than six months. Even if one of the

exceptions applies, the certified record of trial must be sent to Code 40 for any case previously returned by an appellate authority for further action.

- **0167 and 0169 – “Art. 69 Reviews and Substitution of Discharge, Art. 74(b)”** – Sections 0167 and 0169 include provisions that clarify who may sign for an appellant’s application of relief. Both sections above include applicant’s counsel, as well as applicant’s spouse, next of kin, executor, guardian or other person with a proper interest in the matter to sign when the applicant is unable to sign due to physical or mental incapacity.

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This Sidebar and attachment has been posted to Code 20's page on the JAG Portal at: <https://portal.secnave.navy.mil/orgs/JAG/20/SitePages/Home.aspx> and on the SJA to CMC’s website at: <https://www.hqmc.marines.mil/sja/Branches/Military-Justice-Branch-JMJ/>.